



State of Utah

Department of
Environmental Quality

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DAQ-011-06

MEMORANDUM

TO: Air Quality Board

THROUGH: Rick Sprott

FROM: Colleen Delaney and Jim Schubach

DATE: February 23, 2006

SUBJECT: Propose for Public Comment: Delete R307-413, *Permits: Exemptions and Special Provisions*; Amend R307-101-2, *Definitions*; and Amend R307-325, *Davis and Salt Lake Counties and Ozone Nonattainment Areas: Ozone Provisions*.

Utah's rulemaking statute (63-46a) allows 120 days for agencies to take final action on a proposal to change a rule, counting from the date the change is published in the Utah State *Bulletin*. If no action is taken, the proposal expires. Whenever changes are proposed in multiple rules that are interrelated, there is a risk that some will be adopted as they were proposed and will be ordered into effect during that 120-day period, while others will be amended. Those that are amended must be published again in the *Bulletin*, and thus cannot be ordered into effect within the 120 day period. Staff always watches carefully, to be sure that there are no gaps in coverage of the rules.

Since the NSR rules changes were published in the *Bulletin* on December 1, 2005, the 120-day clock expires on March 31. Other agenda items in this packet include further amendments to the NSR rules based on the public comment received; those changes will be sent to the Division of Administrative Rules by March 15 and will be published in the *Bulletin* on April 1. The earliest date on which they can be made effective will be May 2.

However, no changes are needed in three of the rules: R307-413, which was proposed for deletion because its provisions are being moved into R307-401; R307-101-2, where certain definitions were deleted because they are being moved to other rules; and R307-325, where there are both additions and deletions. If these three rules are made effective by March 31, the deleted provisions will be missing from our rules until the revised rules become effective on May 2; if we do not make the original proposals effective by March 31, the proposals expire.

Interestingly, DAR staff says this situation has not arisen before in their 15+ years of experience with all state agencies, and DAQ has avoided it in the past.

DAR staff recommends that the original proposals on R307-413, R307-101-2, and R307-325 be allowed to lapse, and that new proposals be filed. The DAR form will explain why this is being done, and will note that we have already taken comments on these proposals. These new proposals would be published on April 1, and thus would be on the same timetable as the other NSR rules. They would be on the Board's agenda on May 4 for final adoption and all of the NSR rules could be made effective after that Board meeting.

Staff Recommendation: Staff recommends that R307-413, R307-101-2, and R307-325 be proposed again for public comment.